

Internal Revenue Service

Number: **200716024**

Release Date: 4/20/2007

Index Number: 368.04-00, 355.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-116133-05

Date:

December 22, 2005

Legend:

Distributing 2 =

LLC 1 =

Distributing 1 =

Sub 1 =

LLC 2 =

Sub 2 =

Controlled 1 =

Controlled 2 =

Business A =

Business B =

Business C =

a =

b =

c =

d =

e =

f =

h =

i =

i =

k =

l =

m =

n =

o =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

State A =

State B =

Dear :

This letter responds to your request for rulings in a letter dated March 22, 2005, regarding certain federal income tax consequences of the Proposed Transactions (defined below). The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether either of the Distributions (defined below) (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is being used principally as a device for the distribution of the earnings and profits of Distributing 1, Distributing 2, Controlled 1, or Controlled 2 (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing 1, Distributing 2, Controlled 1 or Controlled 2 (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing 2 is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the "Distributing Group"). Distributing 2 has outstanding a single class of stock ("Distributing 2 Common Stock"), which is publicly traded and widely held. Based on filings with the Securities and Exchange Commission (the "SEC"), only one shareholder held five percent or more of the Distributing 2 Common Stock on Date 3.

Distributing 2 wholly owns LLC 1, an entity intended to be disregarded as separate from its owner for federal tax purposes under § 301.7701-3 of the Procedure and Administrative Regulations (a “disregarded entity”). Distributing 2 owns all of the class A common stock (the “Distributing 1 Class A Common Stock”), and LLC 1 owns all of the class B common stock (the “Distributing 1 Class B Common Stock,” and together with the Distributing 1 Class A Common Stock, the “Distributing 1 Common Stock”), of Distributing 1. Distributing 1 owns all of the stock of Sub 1 and Controlled 1 (the latter, the “Controlled 1 Common Stock”). Distributing 1 owns a percent of the class A common interests (the “LLC 2 Class A Common Interests”), Sub 1 owns the remaining b percent of the LLC 2 Class A Common Interests, and Distributing 2 owns all of the class B preferred interests (the “LLC 2 Class B Preferred Interests”), in LLC 2, which is treated as a partnership for federal income tax purposes. Controlled 2 is being formed in connection with the Proposed Transactions. Distributing 1, Sub 1, Controlled 1, and Controlled 2 (upon its formation), each is a member of the Distributing Group and affiliated with Distributing 2 under § 1.355-3(b)(4)(iv).

Controlled 1 directly engages in Business A and Business C, and will transfer Business A to Distributing 2 in the Business A Transfer (defined below), so that Distributing 2 will be directly engaged (through disregarded entities) in Business A immediately before Distribution 2 (defined below). The primary customer of Business A historically has been Business C, and following Distribution 2, the primary customer of Business A is expected to be either Business C or a joint venture owned in part by Distributing 2 (the “Joint Venture”), the primary customer of which is expected to be Business C. LLC 2 directly (and through disregarded entities) engages in Business B. Officers of Distributing 1 perform significant management functions, including involvement in the making of significant business decisions with respect to Business B, and regularly participate in the overall supervision, direction, and control of the employees who operate Business B. Financial information has been submitted indicating that Business A (which will, immediately before Distribution 2, be directly conducted by Distributing 2), Business B (conducted by Distributing 1 through LLC 2), and Business C (directly conducted by Controlled 1) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 2 and its affiliates have a cash management system (the “System”) that has been effectuated in accordance with a master agreement and system procedures (the “Master Agreement”) adopted by participating affiliated entities (the “System Participants”) to coordinate and maximize the efficiency of the borrowing requirements and capital investment needs of the participants. Pursuant to the Master Agreement, all accounts in the System are closed on a monthly basis and loan obligations (“System Obligations”) are established. System Obligations only may be established between parent and subsidiary entities. Pursuant to the Master Agreement, System Obligations between an entity and its subsidiary are not netted with the System Obligations between the entity and its parent (e.g., an entity with a receivable from its subsidiary does not net the receivable with an

obligation owed to its parent). It is the intent of the System Participants that a System Obligation creates a direct and independent debtor-creditor relationship between the borrowing entity and the lending entity, and the parties have consistently reported System Obligations in such a manner for federal income tax, book, and regulatory purposes. Under applicable state law, a System Obligation is a valid, binding, direct, and independent obligation of the borrowing entity to the lending entity.

Rescission Transaction

Distributing 1 will have had outstanding during the five-year period preceding Distribution 1 multiple series of non-voting preferred stock (the "Distributing 1 Preferred Stock"), which represented less than b percent of the value of the outstanding Distributing 1 stock. The Distributing 1 Preferred Stock was publicly traded and widely held. During the five-year period, Distributing 1 redeemed certain series of the Distributing 1 Preferred Stock for cash. On Date 4, Distributing 1 redeemed all of the remaining outstanding series of its preferred stock for approximately \$c (the "Preferred Stock Redemption"). Included in the Preferred Stock Redemption was a series of preferred stock (the "Distributing 1 Series A Preferred Stock"), which was redeemed for an aggregate redemption price of \$d, plus accrued and unpaid dividends on such stock (such dividends, the "Accrued Dividends"). One of the holders that participated in the Preferred Stock Redemption (the "Shareholder") held e shares of Distributing 1 Series A Preferred Stock which were redeemed in exchange for \$f (such transaction, the "Redemption").

Distributing 1 intends to enter into an agreement (the "Rescission Agreement") with Shareholder with respect to the Redemption (upon consummation, the "Rescission Transaction"). Pursuant to the Rescission Agreement, on or before Date 7, which is the last day of the taxable year for each of Distributing 1 and Shareholder that includes the Redemption, Distributing 1 will issue e shares of Distributing 1 Series A Preferred Stock to Shareholder. The Rescission Transaction will cause the legal and financial arrangements between Distributing 1 and Shareholder to be identical in all material respects, from the date immediately before the Redemption, to such arrangements that would have existed had the Redemption not occurred. Shareholder will remit to Distributing 1 the entire amount of the proceeds Shareholder received in the Redemption, other than the Accrued Dividends. Distributing 1 will also pay to Shareholder the exact amount of the dividend payment that would have accrued with respect to the e shares of Distributing 1 Series A Preferred Stock during the period from the effective time of the Redemption to the effective time of the Rescission Transaction as if the Shareholder had owned the Distributing 1 Series A Preferred Stock during that time. Other than as described above, no consideration will be paid by either party to induce the other to agree to enter into the Rescission Agreement. The Rescission Agreement also releases both parties from any liability or obligation that arose from the Redemption.

Distributing 2 Stock Split and Share Repurchase

On Date 5, Distributing 2 announced its intent to repurchase h shares of Distributing 2 Common Stock by Date 8 through stock repurchases (the “Share Repurchases”). This number excludes any shares redeemed in connection with the Exchange Offer (defined below) and is adjusted to take into account the Stock Split (defined below). On Date 6, Distributing 2 effectuated a two-for-one stock split in a transaction that is intended to qualify under § 305(a) (the “Stock Split”). Distributing 2 has repurchased i of the h shares.

Sub 2 Distribution and Liquidation

Immediately prior to the Sub 2 Dividend (defined below), Distributing 2 owned all of the stock of Sub 2 which was a member of the Distributing Group. Sub 2, in turn, owned all of the common stock of Distributing 1 and other subsidiaries. On Date 1, Sub 2 distributed the stock of Distributing 1 to Distributing 2 as a dividend distribution taxable under § 301 (the “Sub 2 Dividend”). Distributing 2 excluded the amount of the Sub 2 Dividend from its gross income under § 1.1502-13(f)(2)(ii) of the Income Tax Regulations and received a fair market value basis in the stock of Distributing 1 under § 301(d). Additionally, the § 311(b) gain recognized by Sub 2 from the Sub 2 Dividend was deferred under § 1.1502-13 of the Income Tax Regulations (the “Deferred Gain”).

On Date 2, Sub 2 contributed all of its assets (with the exception of common stock of Distributing 1 received in connection with certain related transactions) to a newly-formed disregarded entity and merged into Distributing 2. These transactions were treated by Distributing 2 as a liquidation under § 332 of Sub 2 into Distributing 2 (the “Sub 2 Liquidation”). Following the Sub 2 Liquidation, Distributing 2 was treated as a successor person within the meaning of § 1.1502-13(j)(2)(i) of the Income Tax Regulations and succeeded to the Deferred Gain pursuant to § 1.1502-13(j)(2)(ii) of the Income Tax Regulations.

Proposed Transactions

To effect the separation of Business C from Business B and the other businesses of the Distributing Group, the following series of related transactions have been proposed (collectively, the “Proposed Transactions”):

(i) Pursuant to a common plan and agreement executed prior to any transfer pursuant thereto, (a) Distributing 2 transfers the LLC 2 Class B Preferred Interests to Distributing 1 in exchange for Distributing 1 Class A Common Stock, and (b) Investor, a person not directly or indirectly owned or controlled by Distributing 2, transfers at least \$j to Distributing 1 in exchange for Distributing 1 preferred stock (of the same series issued to Shareholder in the Rescission Transaction) in a transaction intended to qualify under § 351 ((a) and (b), collectively, the “Preferred Interests Contribution”). The value of the LLC 2 Class B Preferred Interests transferred to Distributing 1 is less than o percent of the value of the Distributing 1 Class A Common Stock held by Distributing 2 immediately after the Preferred Interests Contribution.

(ii) Distributing 1 contributes b percent of the LLC 2 Class B Preferred Interests to Sub 1 (the “Sub 1 Contribution”).

(iii) Distributing 2 forms Controlled 2.

(iv) Distributing 1 transfers to LLC 2 System Obligations of Distributing 2 to Distributing 1 (the “Assigned Obligations”) in satisfaction of System Obligations of Distributing 1 to LLC 2, with the excess Assigned Obligations, if any, being contributed to the capital of LLC 2 (the “Assigned Obligations Transfer”).

(v) Distributing 1 distributes (i) to Distributing 2, m percent of the Controlled 1 Common Stock, and (ii) to LLC 1, n percent of the Controlled 1 Common Stock. Immediately thereafter, LLC 1 distributes all of the Controlled 1 Common Stock received from Distributing 1 in the immediately preceding sentence to Distributing 2 (collectively, “Distribution 1”).

(vi) Controlled 1 forms a limited liability company under the laws of State B that will be a disregarded entity (“Business A LLC”).

(vii) Controlled 1 and Business A LLC form a limited partnership under the laws of State A that will be a disregarded entity (“Business A LP”).

(viii) Controlled 1 contributes a k percent undivided interest in the assets associated with the conduct of Business A, certain other assets, and liabilities associated therewith to Business A LLC.

(ix) Business A LLC contributes the assets and liabilities received in step (viii) to Business A LP in exchange for a k percent Business A LP limited partner interest.

(x) Controlled 1 contributes an l percent undivided interest in the assets associated with the conduct of Business A, certain other assets, and liabilities associated therewith to Business A LP in exchange for an l percent Business A LP general partner interest.

(xi) Controlled 1 distributes all of the outstanding interests in Business A LLC and Business A LP to Distributing 2 (the “Business A Transfer”).

(xii) Controlled 2 borrows cash from an unrelated lender (the “Controlled 2 Third Party Borrowing”) to fund the Cash Proceeds (defined below). The Controlled 2 Third Party Borrowing will be effective no sooner than the effective time of the Contribution (defined below) and will be contingent upon the effectuation of the Contribution.

(xiii) Distributing 2 contributes the Controlled 1 Common Stock and certain other assets (collectively, the “Contributed Assets”) to Controlled 2 in exchange for Controlled 2 common stock (the “Controlled 2 Common Stock”), assumption of liabilities associated with the Contributed Assets, and cash (the cash portion of the exchange, the “Cash

Proceeds”; such transaction, the “Contribution”). The Cash Proceeds will be in an amount that is intended to be less than the aggregate basis of Distributing 2 in the Contributed Assets reduced by the amount of any liabilities assumed by Controlled 2 in connection with the Contribution. All or part of the other assets may be contributed by Controlled 2 to Controlled 1 (the “Second Contribution”). Controlled 2, Controlled 1, and any future members of the affiliated group of corporations of which Controlled 2 will be the common parent are herein collectively referred to as the “Controlled Group”).

(xiv) Controlled 2 forms a limited liability company under the laws of State B that will be a disregarded entity (“Controlled 1 Holdings LLC”).

(xv) Controlled 2 contributes all or a portion of the outstanding Controlled 1 Common Stock to Controlled 1 Holdings LLC.

(xvi) Distributing 2 forms a limited liability company under the laws of State B that will be a disregarded entity (“Repayment LLC”).

(xvii) Distributing 2 and Repayment LLC form a limited partnership under the laws of State A that will be a disregarded entity (“Repayment LP”).

(xviii) Distributing 2 contributes k percent of the Cash Proceeds not utilized as described in step (xxii) below and a number of shares of Controlled 2 Common Stock (determined as described below) to Repayment LLC.

(xix) Repayment LLC contributes all of that portion of the Cash Proceeds and all of the Controlled 2 Common Stock received in step (xviii) above to Repayment LP in exchange for a k percent Repayment LP limited partner interest.

(xx) Distributing 2 contributes l percent of the Cash Proceeds not utilized as described in step (xxii) below and a number of shares of Controlled 2 Common Stock (determined as described below) to Repayment LP in exchange for an l percent Repayment LP general partner interest. The Controlled 2 Common Stock held by Repayment LP is herein referred to as the “Repayment Shares.”

(xxi) Distributing 2 transfers all of its interest in Repayment LLC and Repayment LP to LLC 2 in repayment of the Assigned Obligations (such transfer, the “Repayment Transfer”). The number of Repayment Shares to be contributed by Distributing 2 directly and indirectly to Repayment LP in steps (xviii) through (xx) above, and the amount of the Assigned Obligations satisfied by the Repayment Transfer will be determined pursuant to an exchange agreement between Distributing 2 and LLC 2 that is intended to reflect arm’s length terms.

(xxii) In addition to, or in the alternative to, the use of the Cash Proceeds described in steps (xviii) and (xx) above, Distributing 2 (i) irrevocably transfers all or a portion of the Cash Proceeds to a trust solely for the benefit of its existing creditors,

which (within the period ending Date 8) will use the contributed funds solely to satisfy, at or before maturity, indebtedness (including interest) incurred or accrued by Distributing 2 to various parties unrelated to the Distributing Group prior to the date of Distribution 2 (the “Distributing 2 External Debt”), or (ii) uses all of the Cash Proceeds to directly satisfy, at or before maturity (within the period ending Date 8), Distributing 2 External Debt. The Distributing 2 External Debt intended to be satisfied hereunder will have been incurred in transactions in the ordinary course of business unrelated to the Distributions (“Ordinary Course Transactions”).

(xxiii) Controlled 1 borrows money from an unrelated lender (the “Controlled 1 Third Party Borrowing”).

(xxiv) Controlled 1 repays obligations that it owes to Distributing 1 and any amounts required to satisfy its obligations under a shared credit facility with the proceeds of the Controlled 1 Third Party Borrowing (the “Controlled 1 Debt Repayment”).

(xxv) Repayment LP sells the Repayment Shares to either one or more private investors or the public in exchange for cash (the “Offering”). The Repayment Shares will possess, in the aggregate, less than 20 percent of the total combined voting power and value of Controlled 2 Common Stock (which will be Controlled 2’s only outstanding class of stock).

(xxvi) Distributing 2 initiates an exchange offer to exchange shares of Controlled 2 Common Stock for shares of Distributing 2 Common Stock (the “Exchange Offer”). The Exchange Offer will be subject to a number of conditions, including a condition that a to-be-determined amount of Distributing 2 Common Stock is tendered for exchange. If all conditions to the Exchange Offer are not satisfied (or waived), the Exchange Offer will not be completed. If the Exchange Offer is not completed, Distributing 2 intends to effectuate Distribution 2 by making a pro-rata distribution of the Controlled 2 Common Stock that it holds following the Repayment Transfer to all holders of Distributing 2 Common Stock.

(xxvii) Distributing 2 distributes the shares of Controlled 2 Common Stock to shareholders participating in the Exchange Offer in exchange for shares of Distributing 2 Common Stock (such shares, the “Exchanged Shares”). If the Exchange Offer is undersubscribed, Distributing 2 distributes the excess shares of Controlled 2 Common Stock pro rata with respect to the shares of Distributing 2 Common Stock that are not tendered in the Exchange Offer (such shares of Distributing 2 Common Stock with respect to which such pro-rata distribution is made, the “Non-Exchanged Shares,” such transactions, together with the Repayment Transfer, collectively, “Distribution 2,” and together with Distribution 1, the “Distributions”). Distributing 2 intends to distribute cash to any shareholder that otherwise would receive a fractional share of Controlled 2 Common Stock. Distributing 2 intends to utilize an exchange agent to facilitate this payment for fractional shares.

In connection with the Proposed Transactions, the Distributing Group and the Controlled Group will enter into agreements for (i) transitional services ("Transitional Services") for a period not expected to exceed two years following the effective time of Distribution 2 (the "Transition Period"), (ii) tax sharing and allocations (such agreement, the "Tax Sharing Agreement"), and (iii) certain other contractual relationships the terms of which will be negotiated at arm's length (collectively, the "Continuing Agreements"). The Transitional Services may be compensated on a cost basis during the Transition Period but will be compensated on an arm's-length basis if the service period is extended.

Representations

Distribution 1

The following representations have been made regarding Distribution 1:

(a) Other than (i) obligations repaid in the Controlled 1 Debt Repayment in step (xxiv) above and (ii) trade payables between Distributing 1 and its affiliates and Controlled 1 and its affiliates created in the ordinary course of business, including those under the Continuing Agreements, Controlled 1 will not be indebted to Distributing 1 after Distribution 1. Any indebtedness owed by Controlled 1 to Distributing 1 after Distribution 1 will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing 1 in Distribution 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(c) The financial information submitted on behalf of Business B (as conducted by Distributing 1 through LLC 2) and Business C (as directly conducted by Controlled 1), including the five years of financial information for each of such businesses, represents the present operations of each business, and regarding each business, there have been no substantial operational changes since the submission of the financial information.

(d) Following Distribution 1, Distributing 1 will continue the active conduct of Business B through LLC 2, and Controlled 1 will directly continue the active conduct of Business C, independently and with their separate employees.

(e) Distribution 1 is being carried out to facilitate Distribution 2.

(f) There is no plan or intention to (i) liquidate either Distributing 1 or Controlled 1, (ii) sell or otherwise dispose of the assets of either corporation (except in the ordinary course of business), or (iii) merge either corporation with any other corporation, in each case, after the Proposed Transactions.

(g) Distribution 1 is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.

(h) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.

(i) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1 or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.

(j) Except possibly for payments made for Transitional Services during the Transition Period, payments made in all continuing transactions between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(k) Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of either corporation).

(l) The excess loss account of Distributing 1 in the stock of Controlled 1, if any, will not have been created or increased by any of the Proposed Transactions.

The Contribution, Distribution 2, and the Repayment Transfer

The following representations have been made regarding the Contribution, Distribution 2, and the Repayment Transfer:

(m) Other than trade payables between Distributing 2 and its affiliates and Controlled 2 and its affiliates created in the ordinary course of business, including those under the Continuing Agreements, Controlled 2 will not be indebted to Distributing 2 after Distribution 2. Any indebtedness owed by Controlled 2 to Distributing 2 after Distribution 2 will not constitute stock or securities.

(n) No part of the consideration to be distributed by Distributing 2 in Distribution 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2. The Repayment Transfer in step (xxi) above will be received by LLC 2 in its capacity as a creditor of Distributing 2.

(o) The financial information submitted on behalf of Business A (as directly conducted by Distributing 2) and Business C (as directly conducted by Controlled 1), including the five years of financial information for each of such businesses, represents the present operations of each business, and regarding each business, there have been no substantial operational changes since the submission of the financial information.

(p) Immediately after Distribution 2, at least 90 percent of the fair market value of the gross assets of Controlled 2 will consist of the stock and securities of Controlled 1, which is directly engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(q) Following Distribution 2, Distributing 2 will directly continue the active conduct of Business A, and Controlled 1 will directly continue the active conduct of Business C, independently and with their separate employees.

(r) Distribution 2 is being carried out for the following corporate business purposes: to separate Business C from Business A, Business B, and the other business of the Distributing Group in order to (i) permit an allocation of resources between the Distributing Group and the Controlled Group in a manner that will allow each management group to focus on the strengths and weaknesses of only their respective business, which, in turn, should better facilitate the accomplishment of the business objectives for each of the Distributing Group and the Controlled Group; (ii) eliminate a discount that the markets have applied to Distributing 2's stock due to the Distributing Group's ownership of both Business B and Business C; and (iii) facilitate merger and acquisition activity involving Distributing 2 by eliminating, in certain circumstances, the need for a potential acquirer to seek approval from, or review by, State A regulators. The Distributions are motivated, in whole or substantial part, by these corporate business purposes.

(s) There is no plan or intention to (i) liquidate either Distributing 2 or Controlled 2, (ii) sell or otherwise dispose of the assets of either corporation (except in the ordinary course of business), or (iii) merge either corporation with any other corporation, in each case, after the Proposed Transactions.

(t) Distribution 2 is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.

(u) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of

the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.

(v) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2 or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2. For purposes of this representation, two or more Distributing 2 shareholders who did not act pursuant to a plan or arrangement within the meaning of § 1.355-6(c)(4) with respect to an acquisition of Distributing Common Stock will not be treated as one person for purposes of § 355(d) by virtue of such shareholders receiving Controlled 2 Common Stock in Distribution 2 pursuant to the Exchange Offer, or by virtue of any such receipt with respect to a pro rata distribution on their Distributing 2 Common Stock.

(w) The total adjusted basis and the fair market value of the Contributed Assets will equal or exceed the sum of (a) the total liabilities assumed (within the meaning of §357(d)) by Controlled 2 (if any) and (b) the total amount of the Cash Proceeds received by Distributing 2 and transferred in connection with the reorganization as described herein.

(x) The liabilities (if any) assumed (as determined under section 357(d)) by Controlled 2 in the Contribution were incurred in the ordinary course of business and are associated with the assets to be transferred.

(y) Immediately before Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Notwithstanding the foregoing, due to Distributing 2's belief that the portion of the Deferred Gain allocated to the stock of Controlled 2 will be redetermined to be excluded from gross income under § 1.1502-13(c)(6), Distributing 2 will not report such Deferred Gain as included in taxable income. Any excess loss account Distributing 2 may have in the Controlled 2 stock (or any excess loss account a member may have in the stock of another member that is required to be taken into account by § 1.1502-19) will be included in income immediately before Distribution 2 to the extent required by regulations (see § 1.1502-19).

(z) Except possibly for payments made for Transitional Services during the Transition Period, payments made in all continuing transactions between Distributing 2 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(aa) No two parties to the Proposed Transactions are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(bb) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled 2 (including any predecessor or successor of either corporation).

(cc) The total fair market value of the Contributed Assets will exceed the sum of (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (b) the amount of any liabilities owed to Controlled 2 by Distributing 2 that are discharged or extinguished in connection with the exchange, and (c) the amount of the Cash Proceeds and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.

(dd) The payment of cash in lieu of a fractional share of Controlled 2 Common Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled 2 of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash that will be paid in the transaction to all Distributing 2 shareholders in lieu of fractional shares of Controlled 2 Common Stock will not exceed one percent of the total consideration that will be distributed in the transaction. Any fractional share interests of each Distributing 2 shareholder will be aggregated, and it is intended that no Distributing 2 shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled 2 Common Stock.

(ee) The fair market value of the Contributed Assets will exceed their aggregate adjusted basis immediately after the Contribution.

(ff) If any property is transferred by Distributing 2 to Controlled 2 for which an investment credit determined under § 46 has been or will be claimed, Distributing 2 represents that the income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

The Rescission Transaction

The following representations have been made regarding the Rescission Transaction:

(gg) The Rescission Agreement is intended to restore the legal and financial arrangements between Distributing 1 and Shareholder that would have existed had Shareholder's stock not been redeemed.

(hh) The effect of the Rescission Agreement is to cause the legal and financial arrangements between Distributing 1 and Shareholder to be identical in all material respects, from the date immediately before the Redemption, to such arrangements that would have existed had the Redemption not occurred.

(ii) Neither Distributing 1 nor Shareholder has taken or will take any material position inconsistent with the position that would have existed had Shareholder's stock not been redeemed.

Rulings

Distribution 1 and the Rescission Transaction

Based solely on the information submitted and the representations set forth above, we rule as follows regarding Distribution 1:

(1) For U.S. federal income tax purposes, (i) the Redemption and the issuance of preferred stock to the Shareholder pursuant to the Rescission Agreement shall be disregarded and (ii) the shares of preferred stock held by Shareholder at the effective time of the Redemption shall be treated as continuing to be outstanding, including during the period from the effective time of the Redemption through and including the effective time of the Rescission Agreement. Rev. Rul. 80-58, 1980-1 C.B. 181.

(2) As a result of ruling (1), the Redemption did not result in Distributing 2 obtaining § 368(c) control of Distributing 1.

(3) Distributing 1 will recognize no gain or loss on its distribution of Controlled 1 Common Stock to Distributing 2 in Distribution 1 (§ 355(c)(1)).

(4) Distributing 1 will not take into account as income or gain the excess loss account, if any, in the stock of Controlled 1 existing at the time of Distribution 1 (see § 1.1502-19(g), example 3).

(5) Distributing 2 will recognize no gain or loss upon its receipt of the Controlled 1 Common Stock from Distributing 1 in Distribution 1 (§ 355(a)(1)).

(6) The basis of Distributing 2 in the Distributing 1 Common Stock and Controlled 1 Common Stock after Distribution 1 will equal the basis of the Distributing 1 Common Stock that Distributing 2 held immediately before Distribution 1, allocated between the Distributing 1 Common Stock and the Controlled 1 Common Stock in proportion to their relative fair market values at the time of Distribution 1 in accordance with § 1.358-2(a)(2) (§§ 358(c), 1.1502-19).

(7) Distributing 2's holding period in the Controlled 1 Common Stock received in Distribution 1 will include the holding period of the Distributing 1 Common Stock with respect to which Distribution 1 is made (§ 1223(1)).

(8) Distributing 1 and Controlled 1 will allocate their earnings and profits in accordance with §§ 312(h), 1.312-10(b), and 1.1502-33(f)(2).

The Contribution, Distribution 2, Repayment Transfer, and Preferred Interests
Contribution

(9) The Contribution, followed by Distribution 2, will be a reorganization under § 368(a)(1)(D). Distributing 2 and Controlled 2 will each be "a party to the reorganization" under § 368(b). The Second Contribution will not prevent the Contribution and Distribution 2 from qualifying as a reorganization under § 368(a)(1)(D) (see Rev. Rul. 2002-85, 2002-2 C.B. 986).

(10) To the extent the Cash Proceeds do not exceed the aggregate adjusted basis of the assets transferred by Distributing 2 to Controlled 2 (reduced by any liabilities assumed by Controlled 2), Distributing 2 will not recognize any gain or loss on the Contribution (§§ 361(b)(1)(A), 361(b)(3), and 357(a)).

(11) Controlled 2 will not recognize any gain or loss on its receipt of the Contributed Assets from Distributing 2 in the Contribution (§ 1032(a)).

(12) The basis of Controlled 2 in the Contributed Assets will equal the basis of the Contributed Assets in the hands of Distributing 2 immediately before the Contribution (§ 362(b)).

(13) The holding period of Controlled 2 in the Contributed Assets received from Distributing 2 in the Contribution will include the period during which Distributing 2 held those assets (§ 1223(2)).

(14) Distributing 2 will recognize no gain or loss on Distribution 2 (§ 361(c)(1), (2), and (3)).

(15) Except for the possible application of § 897 to any foreign person that has owned more than 5 percent of the total fair market value of any class of Distributing 2

stock at some time during the five years preceding Distribution 2, the Distributing 2 shareholders will recognize no gain or loss (and will not include any amount in income) upon receipt of the stock of Controlled 2 in Distribution 2 (§ 355(a)(1)).

(16) A shareholder who receives cash in lieu of fractional shares of Controlled 2 Common Stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined below in rulings 17 and 18, and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided such fractional shares of stock will be held as capital assets on the date of Distribution 2 (§§ 1221 and 1222).

(17) The basis of a Distributing 2 shareholder in a share of Controlled 2 Common Stock received in the Exchange Offer (as adjusted under § 1.358-1) shall be the same as the basis of the share of Distributing 2 Common Stock tendered in the Exchange Offer. If one share of Controlled 2 Common Stock is received in the exchange for more than one share of Distributing 2 Common Stock, the basis of each share of Distributing 2 Common Stock must be allocated to the shares of Controlled 2 Common stock received in the exchange in a manner that reflects that, to the greatest extent possible, a share of Controlled 2 Common Stock received is received in exchange for shares of Distributing 2 Common Stock acquired on the same date and at the same price. If a Distributing 2 shareholder that purchased or acquired shares of Distributing 2 Common Stock on different dates or at different prices is not able to identify which particular share of Controlled 2 Common Stock (or portion thereof) is received in exchange for a particular share of Distributing 2 Common Stock, the shareholder may designate which share of Controlled 2 Common Stock is received in exchange for a particular share of Distributing 2 Common Stock, provided the terms of the designation are consistent with the terms of Distribution 2.

(18) Each Distributing 2 shareholder's basis in a Non-Exchanged Share (as adjusted under Treasury Regulation § 1.358-1) shall be allocated between the share of Distributing 2 Common Stock with respect to which Distribution 2 is made and the share or shares of Controlled 2 Common Stock (or allocable portions thereof) received with respect to the share of Distributing 2 Common Stock in proportion to their fair market values. If one share of Controlled 2 Common Stock is received with respect to more than one share of Distributing 2 Common Stock, the basis of each share of Distributing 2 Common Stock must be allocated to the shares of Controlled 2 Common stock received in a manner that reflects, to the greatest extent possible, that a share of Controlled 2 Common Stock received is received with respect to shares of Distributing 2 Common Stock acquired on the same date and at the same price. If a Distributing 2 shareholder that purchased or acquired shares of Distributing 2 Common Stock on different dates or at different prices is not able to identify which particular share of Controlled 2 Common Stock (or portion thereof) is received with respect to a particular share of Distributing 2 Common Stock, the shareholder may designate which share of Controlled 2 Common Stock is

received with respect to a particular share of Distributing 2 Common Stock, provided the terms of the designation are consistent with the terms of Distribution 2.

(19) Each Distributing 2 shareholder's holding period in the Controlled 2 Common Stock received in Distribution 2 will include the holding period of the Distributing 2 Common Stock tendered in the Exchange Offer or with respect to which Distribution 2 is made, provided that the shareholder held such Distributing 2 stock as a capital asset on the date of Distribution 2 (§ 1223(1)).

(20) Distributing 2 and Controlled 2 will allocate their earnings and profits, if any, in accordance with §§ 312(h), 1.312-10(a), and 1.1502-33(e)(3).

(21) LLC 2 will obtain a cost basis in the Repayment Shares determined as of the effective date of the Repayment Transfer.

(22) Following Distribution 2, Controlled 2 will not be considered a successor to Distributing 2 for purposes of § 1504(a)(3); therefore Controlled 2 and its subsidiaries that are "includible corporations" under § 1504(b) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled 2 as the common parent.

(23) Payments made between Distributing 2 and Controlled 2 pursuant to the Tax Sharing Agreement with respect to liabilities that (i) have arisen or will arise for a taxable period ending on or before Distribution 2 or for a taxable period beginning before and ending after Distribution 2 and (ii) will not become fixed and ascertainable until after Distribution 2, will be treated as occurring immediately before Distribution 2 (cf. Arrowsmith v. Commissioner, 344 U.S. 6 (1952)).

(24) Distributing 2 (as a successor to Sub 2 under § 1.1502-13(j)(2)(i)) will take into account a portion of Sub 2's Deferred Gain on the distribution of the Controlled 2 stock in Distribution 2 (§ 1.1502-13(c)(2)(ii)). We decline to determine under § 1.1502-13(c)(6)(ii)(C) that excluding such portion of the Deferred Gain is consistent with the purposes of § 1.1502-13 and other applicable provisions of the Code and regulations. Accordingly, such gain will not be redetermined under § 1.1502-13(c)(1)(i) to be excluded from gross income (§ 1.1502-13(c)(6)(ii)).

Caveats

We express no opinion about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, we express no opinion regarding:

(i) Whether either Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether either Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) Whether either Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);

(iv) The federal tax treatment of the Stock Split and the Share Repurchases;

(v) The federal tax treatment of the Sub 2 Dividend and the Sub 2 Liquidation;

(vi) Except as provided in rulings (3) and (5) above, the federal tax treatment of the Preferred Interests Contribution in step (i);

(vii) The federal tax treatment of the Sub 1 Contribution in step (ii);

(viii) The federal tax treatment of the Assigned Obligations Transfer in step (iv);

(ix) The federal tax treatment of the Business A Transfer in step (xi);

(x) Except as provided in ruling (21) above, the federal tax treatment of the Repayment Transfer in step (xxi);

(xi) The federal tax treatment of the Controlled 1 Debt Repayment in step (xxiv);

(xii) The federal tax treatment of the Offering in step (xxv);

(xiii) The federal tax treatment of Transitional Services; or

(xiv) Except as provided in rulings (1) and (2) above, the federal tax treatment of the Preferred Stock Redemption.

Procedural Statements

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to the taxpayer and certain authorized representatives.

Sincerely,

Marc A. Countryman
Senior Technician Reviewer, Branch 4
Office of Chief Counsel (Corporate)